



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Tony Wolfe
President and CEO
People's Bank
518 West C Street
Newton, NC 28658

MAY 19 2005

RE: MUR 5496
People's Bank

Dear Mr. Wolfe:

On May 5, 2005, the Federal Election Commission found that there is reason to believe that People's Bank violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred [REDACTED]

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

[REDACTED]

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MUR 5496
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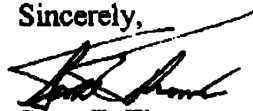
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FACTUAL AND LEGAL ANALYSIS

MUR 5496

RESPONDENT: People's State Bank

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

Although the Act does not permit contributions by national banks, and prohibits candidates and committees from accepting such contributions, candidates are permitted to obtain bank loans and lines of credit for use in connection with their federal campaigns as long as those transactions are made in the ordinary course of business. 2 U.S.C. §§ 431(8)(B)(vii) and (xiv), 441b; Statement of Reasons, MUR 4944.

Candidate Lawrence David Huffman personally obtained a \$100,000 loan on March 30, 2004 from People's State Bank ("People's") and used the proceeds to purchase a ninety-day certificate of deposit from People's, which served as collateral for the loan.¹ The candidate's

¹ Huffman was a candidate for the U.S. House of Representatives from the 10th District of North Carolina during the 2004 primary election. Huffman received 35% of the vote in the primary election, but needed 40% to avoid a runoff. Heather Howard, *Recount Confirms McHenry Winner; GOP Candidate for Congressional Seat Says He Hopes to Unite Party*, CHARLOTTE OBSERVER, August 26, 2004, at 1B. On August 17, 2004, he lost the runoff election by 85 votes to Patrick McHenry. *Id.* This was Huffman's first federal campaign. Previously, Huffman served as Sheriff of Catawba County, North Carolina, an elected position, for 22 years. Jim Morrill, *Lawmakers Weigh in on 10th Race; Group Backed by GOP Officials Runs Ad Blasting 3 Candidates in Primary*, CHARLOTTE OBSERVER, July 17, 2004, at 1B.

1 "intent was to provide the certificate of deposit to the campaign for use as needed, but not to be
2 spent unless needed." He explained that because he was uncertain whether his campaign would
3 actually need to use the funds, he decided to purchase a certificate of deposit so that the funds
4 could earn interest during the term of the loan and offset the interest that accrued on the loan.

5 The candidate also clarified that "the purpose of the loan was to make funds available for
6 campaign purposes." Accordingly, the Huffman for Congress committee ("Committee")
7 reported the loan on its original 2004 April Quarterly Report. A candidate who receives a loan
8 for campaign purposes is deemed to have done so as the agent of his or her campaign. 2 U.S.C.
9 § 432(e)(2). Thus, committees are advised that "[i]f a candidate obtains a bank loan for
10 campaign-related purposes, the committee must report the loan[.]" *Campaign Guide for*
11 *Congressional Candidates and Committees* (2004) at 71. However, since 2002, committees have
12 been able to report these loans as contributions or loans from the candidate to the committee, *see*
13 11 C.F.R. § 104.3(a)(3)(vii)(B), provided that the financial institution is reported as a secondary
14 source of the loan and that on the report where the transaction first appears the committee
15 includes a Schedule C-1 disclosing the terms of the financial institution's loan to the candidate.²
16 11 C.F.R. § 104.3(d)(4). This reflects that there are in a sense two transactions involved in such
17 a scenario – one between the financial institution and the candidate, and one between the
18 candidate and his or her committee.

19 In this case, however, the second transaction was not immediately consummated.
20 Although the candidate avers that he had "campaign purposes" in mind when he obtained the

² Schedule C-1 also must contain the date the loan was incurred, the due date of the loan, the amount of the loan, the interest rate, the name and address of the lending institution, the types and values of any collateral used to secure the loan or an explanation of the basis upon which the loan or line of credit was made. 11 C.F.R. § 104.3(d)(4).

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1 loan, he did not immediately lend or contribute the proceeds of the loan to the Committee.
2 Rather, he used them to purchase a certificate of deposit that remained in his name, not the
3 Committee's (although he says that neither he nor the Committee knew until later that the bank
4 had placed the certificate of deposit in his name). The Committee did ultimately use the
5 proceeds of the certificate of deposit in July 2004, and reported the funds as a loan from the
6 candidate in its Pre-Runoff Report filed in August 2004.

7 It appears that People's made the original March 30 loan in the ordinary course of
8 business. A loan is made in the ordinary course of business when it (1) bears the usual and
9 customary interest rate of the lending institution for the category of the loan involved; (2) is made
10 on a basis that assures repayment; (3) is evidenced by a written instrument; and (4) is subject to a
11 due date or amortization schedule. 11 C.F.R. § 100.82(a). According to copies of the
12 promissory note and security agreement provided to the Commission, the People's loan of March
13 30 was made for a period of ninety days, with variable interest at the bank's prime rate, and with
14 a certificate of deposit used as collateral.

15 On June 30, the March 30 loan matured and was renewed. However, the renewal was
16 apparently on terms that did not provide for collateral. The candidate did eventually use the loan
17 proceeds for campaign purposes. Thus, questions arise regarding the legality of the renewed
18 loan. Specifically, the information provided to the Commission raises the question of whether
19 the People's renewal loan was made on a basis that assured repayment as required by the Act and
20 Commission regulations. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. §§ 100.82(a) and (e). Loans are
21 made on a basis that assures repayment if there is sufficient collateral, the bank has a perfected
22 security interest in that collateral and the fair market value of the collateral is equal to or greater

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1 than the loan amount and any senior liens. 11 C.F.R. § 100.82(e)(1). Alternatively, banks can
2 assure repayment by obtaining a written agreement in which the candidate pledges future receipts
3 to the bank. 11 C.F.R. § 100.82(e)(2). Where none of these conditions exist, however, the
4 Commission can also examine the totality of the circumstances surrounding the loan. 11 C.F.R.
5 § 100.82(e)(3).

6 It is unclear whether the June 30 renewal loan complied with the Act. The original term
7 of the March 30 loan was ninety days and expired on June 30, 2004. However, on June 30, the
8 loan was renewed for another ninety days on different terms. The ninety-day certificate of
9 deposit used as collateral for the March 30 loan was "released" on June 30, 2004 and no other
10 collateral was used as security for the renewal loan.³ Thus, the renewal loan remained unsecured.
11 The Commission has no other information indicating how or whether the renewal was made on a
12 basis that assured repayment. As a result, the information available at this time provides reason
13 to believe that People's State Bank may have made a prohibited contribution in the form of an
14 unsecured loan in violation of 2 U.S.C. § 441b.

³ "Released" refers to the certificate of deposit no longer being used as collateral for the loan. However, the candidate did not cash the certificate of deposit at this point; the loan proceeds remained in the certificate of deposit, on deposit at People's.